

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DAVID B. NEWMAN and IRA F/B/O DAVID  
NEWMAN-PERSHING LLC as Custodian, on  
behalf of themselves and all Others Similarly  
Situating, and Derivatively on behalf of FM LOW  
VOLATILITY FUND, L.P.,

Plaintiffs,

v.

FAMILY MANAGEMENT CORPORATION;  
SEYMOUR W. ZISES; ANDREA L.  
TESSLER; ANDOVER ASSOCIATES LLC I;  
ANDOVER ASSOCIATES MANAGEMENT  
CORP.; JOEL DANZIGER, HARRIS  
MARKHOFF; IVY ASSET MANAGEMENT  
CORP.; THE BANK OF NEW YORK  
MELLON CORPORATION; MAXAM  
ABSOLUTE RETURN FUND, LP; MAXAM  
CAPITAL MANAGEMENT LLC; MAXAM  
CAPITAL GP, LLC; and SANDRA MANZKE,

Defendants,

and FM LOW VOLATILITY FUND, L.P.,

Nominal Defendant.

1:08-cv-11215-LBS

**FILED ELECTRONICALLY**

**NOTICE OF PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT  
AND FOR LEAVE TO AMEND THE COMPLAINT**

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**NOTICE IS HEREBY GIVEN THAT,** Plaintiffs will move this Court before the Honorable Leonard B. Sand, United States District Judge, on such date as the Court will determine, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007: (i) pursuant to Federal Rule of Civil Procedure 59(e), for an order amending this Court's Judgment, dated October 20, 2010, with respect to Plaintiffs' request for

leave to amend; and (ii) pursuant to Federal Rule of Civil Procedure 15(a), granting leave to file the proposed Third Amended Class Action and Derivative Complaint (“TAC”), submitted contemporaneously herewith.

This Motion is supported by the accompanying Memorandum of Law, the accompanying Declaration of Demet Basar and the exhibits annexed thereto, all of the prior pleadings and proceedings had herein, and such other written and/or oral argument, as may be presented to the Court.

Dated: November 17, 2010

*Respectfully submitted,*

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

By: /s/ Demet Basar

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